**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Amendment of the Commission's Rules | ) | MB Docket No. 10-71 |
| Related to Retransmission Consent | ) | |

# COMMENTS OF SONY PICTURES TELEVISION INC.

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**COMMENTS OF SONY PICTURES TELEVISION INC.**

Sony Pictures Television Inc. ("SPT") hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.[1] SPT is a leading, independent distributor of syndicated programming to television stations both domestically and throughout the world. SPT and the broadcast stations through which it distributes its programming rely upon the Commission's long-standing syndicated exclusivity rules to provide an effective and efficient mechanism for enforcing privately negotiated exclusivity terms. SPT respectfully urges the Commission to consider carefully the potential havoc that rescinding or otherwise modifying the existing syndicated exclusivity rights could create in the existing market for program distribution, and the deleterious effect any precipitous change could have on consumers.

## I. <u>SUMMARY</u>

SPT believes that eliminating the Commission's syndicated exclusivity rules would be inappropriate in any proceeding, but especially one dedicated to the tangentially related issue of retransmission consent. While these rules are part of the overall regulatory scheme governing the distribution of television broadcast programming,

[1] *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, FCC 11-31 (Mar. 3, 2011) ("NPRM").

syndicated exclusivity presents a host of different issues that cannot properly be developed in this context. Syndicators, producers, broadcasters, and MVPDs have come to rely upon the decades' old syndicated exclusivity rules, which both the FCC and the Congress have repeatedly affirmed are "integral" to promoting the key legislative objective of localism. SPT and broadcasters regularly negotiate market exclusivity into their agreements, relying upon the Commission's rules to provide an efficient mechanism for enforcement. In turn, broadcasters have access to a vast array of programming options to serve the needs of their local communities. If the Commission interferes with these long-established rights and makes it more difficult for local broadcasters to obtain exclusive programming, its actions could undermine the established local broadcast system that has served the public interest well.

## II. SONY PICTURES TELEVISION'S INTEREST IN SYNDICATED EXCLUSIVITY.

Sony Pictures Television is a premier independent producer and distributor of television programming for network, syndication, and cable markets. SPT currently produces or distributes a vast number of programs worldwide, including the domestic network programs *Rules of Engagement* (CBS); *Community* and *The Sing Off* (NBC); and *Mr. Sunshine*, *Happy Endings* and *Shark Tank* (ABC), as well as critically acclaimed cable programming such as *The Big C* (Showtime), *Breaking Bad* (AMC), and *Rescue Me* (FX).

SPT is also an independent distributor of syndicated programming, with a large library of both off-network and first-run programs. Among the many popular programs originally produced for network television and syndicated by SPT are *Seinfeld*, *King of Queens*, *Dawson's Creek*, *Just Shoot Me*, *Mad About You*, *The Nanny*, and *Married . . .*

*With Children.* SPT also syndicates highly-attractive first run programs such as *The Dr. Oz Show* (launched in September 2009 as the highest-rated first-run syndication premiere in seven years) and *The Nate Berkus Show*, and produces the #1 and #2 rated syndicated game shows in America: *Jeopardy!* and *Wheel of Fortune*.

Syndication involves the licensing of programs directly to individual stations (or station groups). As indicated above, there are two types of syndicated programming: off-network programming and first-run programming. Off-network programming, as its name implies, originally airs on a national television network (broadcast or cable). After a certain amount of time and/or a certain number of episodes are produced, these shows are then re-distributed to individual stations through syndication. First-run programming, meanwhile, is programming developed directly for the syndication market.

Off-network syndication plays a critical role in the development of network television programming. As the Commission's Network Inquiry Special Staff Report recognized more than 30 years ago, "it is the revenues from syndication that often make prime-time production a profitable undertaking."[2] This statement is even more true today. Producers count on the possibility of generating revenue from future syndicated distribution to justify the risk and expense of producing network series. The potential for syndicated revenue provides the necessary incentives for producers to create some of the most popular programming on television today. It also allows networks to acquire programming at a lower initial cost, permitting networks to experiment with a diverse menu of shows to determine which ones audiences find most appealing.

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[2] Network Inquiry Special Staff Report, *New Television Networks: Entry, Jurisdiction, Ownership, and Regulation*, Volume 2 400 (1980) ("Network Inquiry Special Staff Report").

Without the same secondary distribution market as off-network programs, first-run programs often generate substantially smaller revenues. As a result, most first-run syndicated shows involve less expensive program formats, such as game shows and talk shows. Still, these programs are often highly desired by viewers, with the most popular first-run syndicated programs eclipsing 10 million viewers each day.[3]

There are typically up to three parties involved in a syndication deal: the production company, the syndicator (when different from the production company), and the station. The production company creates the programming. Production companies will take the initial steps to develop a program and determine the most appropriate distribution strategy. If the production company is developing a program for a network, it will work directly with the network to determine the creative direction for the show.

Depending on the show, a syndicator could be involved even before the program's network debut, for example by acquiring the rights for international first-run distribution and/or providing a cash advance to acquire domestic off-network syndication rights. Funding a program this early in the process can help finance the program's initial network run, but it is a risky endeavor for a syndicator given the high failure rate for network programs. Nevertheless, the syndicator benefits from this early involvement both by securing access to desirable programming before it becomes too competitive and by helping ensure the program's first-run success, which can be (but is not always) an indicator of the show's prospects for syndication. That many popular network shows enter syndication prior to the end of their network run demonstrates the importance of syndication to the program marketplace.

[3] *See* The Nielsen Company, *Syndicated TV Ratings*, Week of May 1, 2011.

There are two distinct markets for off-network and first-run programming: one for broadcast stations and one for cable networks. Many off-network programs are licensed both to local broadcast stations and to a national cable network. At other times, however, parties will acquire exclusive rights to a program. This is especially prevalent in the case of first-run syndicated programming. Even where a program is licensed both to a national cable network and to local broadcast stations, the local stations will often negotiate for broadcast exclusivity within their Designated Market Area ("DMA"). This maximizes the value of the programming to the individual stations by ensuring that all of the viewers watching a particular program at a particular time within the exclusivity area are watching on their local broadcast station. As a result, advertisers will pay the fair market price to advertise on the program, providing local broadcasters with an important source of revenue with which to procure and develop additional programming.

## III. **DISCUSSION**

In four paragraphs buried at the end of a proceeding otherwise dedicated exclusively to retransmission consent and entitled *Amendment of the Commission's Rules Related to Retransmission Consent*, the Commission announced that it is considering fundamentally altering the program distribution marketplace by eliminating the established syndicated exclusivity (and network non-duplication) rules. SPT submits, however, that these rules are an essential component of the programming ecosystem, providing broadcasters with the ability to protect privately negotiated rights. This, in turn, increases the total value of syndicated programming, which, as the Commission has recognized, "increase[s] incentives to supply the programs viewers want to see and . . . encourage[s] the development of a pattern of distribution that makes the best use of the particular advantages of different distribution outlets."[4] On the other hand, without an effective mechanism for broadcasters and syndicators to enforce exclusivity, the syndicated marketplace could become a Wild West, placing the established system of local broadcast programming distribution in disarray.

### A. Congress and the FCC Have Previously Held that Syndicated Exclusivity is Integral to Advancing Legislative Goals, Establishing a High Bar for Revocation of the Rule.

The Commission's proposal to eliminate its syndicated exclusivity rules would repeat a failed experiment and run counter to both its established findings regarding program exclusivity and the clear intent of Congress. In 1980, the FCC eliminated its syndicated exclusivity rules, believing (incorrectly) then that such action posed "no undue risk of injury to the broadcast service the public now receives."[5] Just eight years later, however, the Commission recognized that rescission was ill-advised and based on flawed assumptions.[6] The Commission squarely rejected the factual premises that it had used to justify rescinding the rules, noting that, in hindsight, they had "proven to be understated or untrue."[7] In restoring the rules, the Commission detailed the benefits that

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[4] *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, Report and Order, 3 FCC Rcd. 5299 ¶ 89 (1988) ("Program Exclusivity R&O").

[5] *Cable Television Syndicated Program Exclusivity Rules; Inquiry Into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, 79 FCC.2d 663 ¶ 4 (1980).

[6] Program Exclusivity R&O at ¶ 5 (finding "no compelling public interest argument that would justify an asymmetric treatment of [broadcasters and cable operators]" and that "viewers and the public interest [were] being poorly served" by the regulatory regime in place at the time.

[7] *Id.* at ¶ 22.

syndicated exclusivity provides to the program distribution marketplace and to the public.[8]

Congress has also recognized the importance of the Commission's syndicated exclusivity rules to support marketplace competition and diversity. As the Commission itself observed, the legislative history to the Cable Television Consumer Protection and Competition Act of 1992 indicates that syndicated exclusivity rules are "integral to achieving congressional objectives."[9] In passing the Act, Congress expressly "relied on the protections which are afforded local stations" by the syndicated exclusivity rules.[10]

Against this backdrop, the Commission bears a high burden under the Administrative Procedure Act to justify changing its policy. The FCC lacks the authority to act in contravention of the clear intent of Congress.[11] Yet rescinding the syndicated exclusivity rules would do just that. The legislative history to the 1992 Act confirms that eliminating or altering the syndicated exclusivity rules would "be inconsistent with the regulatory structure" created in the Act.[12] Even if the Commission can reconcile its actions with Congressional intent, however, it still must provide a "reasoned analysis" for

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[8] *Id.* at ¶¶ 33-89 (recognizing that syndicated exclusivity rules, among other things, provide the necessary incentives for development of popular programming, lead to an efficient supply of programming, and permit over-the-air broadcasters to compete on a level playing field with cable operators and other marketplace participants).

[9] FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer and Reauthorization Act of 2004* ¶ 50 (Sept. 8, 2005) ("2005 Report to Congress").

[10] *See* Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 38 (1991).

[11] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

[12] *See* Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 38 (1991).

rescinding its existing rule.[13] As five justices recently concluded in *FCC v. Fox Television Stations, Inc.*, this demands that the Commission justify "*why* it has come to the conclusion that it should now change direction."[14] Given that the Commission has already determined once that repealing its syndicated exclusivity rules was in error, and that restoring them was (and remains) vital to a well-functioning local broadcast marketplace, it must now overcome a high hurdle to establish that the rationales it presented in doing so no longer hold true. SPT believes that the information below demonstrates that the Commission cannot meet this burden, and should maintain its syndicated exclusivity rules undisturbed.

### B. The Retransmission Consent Proceeding Is Not the Proper Forum to Consider Changing or Eliminating Syndicated Exclusivity Rules.

The Commission, by proposing to eliminate syndicated exclusivity rules in the context of a retransmission consent proceeding, appears to treat program exclusivity as merely a subset of retransmission consent. Such an approach fails to recognize the important role that these rules play in ensuring a vibrant program production and distribution marketplace. In the 2005 Report to Congress discussed above, the Commission recognized that program exclusivity rules are part of a "mosaic of other regulatory and statutory provisions" (including retransmission consent, must carry, and copyright laws) designed to implement the key policy objective of promoting free over-the-air television.[15] Accordingly, the Commission observed that "when any piece of the

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[13] *Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 42 (1983).

[14] 129 S. Ct. 1800, 1831 (2009) (Breyer, J., dissenting). Justice Kennedy, in his concurring opinion, endorsed position taken by the four dissenting justices that "the agency must explain why 'it now reject[s] the considerations that led it to adopt that initial policy.'" *Id.* at 1822.

[15] 2005 Report to Congress at ¶ 33.

legal landscape governing carriage of television broadcast signals is changed, other aspects of that landscape also require careful examination."[16]

By raising the prospect of eliminating or altering its syndicated exclusivity rules in this proceeding, the Commission places programmers and syndicators in the crosshairs of what is ultimately a dispute between broadcasters and multichannel video programming distributors ("MVPDs"). Yet the Commission has consistently found that program exclusivity, properly defined, furthers the public interest.[17] By now proposing to remove key protections for program exclusivity, the FCC threatens to cause "major disruption and possible unintended consequences" to the program production marketplace.[18]

### C. Exclusivity Benefits Local Broadcasters, Distributors, and Ultimately Consumers.

Syndicated exclusivity rules are vital to preserving the robust programming marketplace that consumers have come to expect. The rules benefit broadcasters by providing them with the option to negotiate for enforceable, exclusive programming rights throughout their home markets. This, in turn, allows broadcasters to recognize the true value of syndicated programming, leading them to pay the appropriate market price to obtain such rights. Consumers become the real winners in this equation, with access to diverse programming options that are responsive to their informational needs and entertainment preferences.

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[16] *Id.*

[17] *Id.* at ¶ 50 ("[W]e do not deem it in the public interest to interfere with contractual arrangements that broadcasters have entered into for the very purpose of securing programming content that meets the needs and interests of their communities.").

[18] *Id.* at ¶ 51.

### 1. Local Broadcasters Have Particular Difficulties Protecting Negotiated Exclusivity.

Local broadcasting is a unique distribution mechanism in this country. When a television network or a cable network negotiates for exclusive content, it does so on a national basis and the distributor will not authorize any other television or cable programmer to carry that content.[19] If another programmer were to broadcast such exclusive content, it would be in clear violation of the distributor's rights. Local broadcasters, in contrast, do not typically obtain national program rights, as they do not have a national audience. Instead, each broadcaster will often seek the exclusive right to broadcast content *within its geographic area*. As a result of this system, hundreds of broadcasters across the country may obtain "exclusive" rights to broadcast the same syndicated programming within their respective geographic markets. Thus, at the same time, a syndicated program could air on unaffiliated stations in New York, Boston, Miami, and Chicago, each of which may have been separately granted exclusive rights to the program.

When broadcast signals were only delivered over-the-air, this system worked effectively. As a general rule, viewers at the core of a DMA were only able to obtain signals from stations within their market (as least without experiencing signal degradation). As MVPD penetration increased, however, this dynamic changed. Viewers obtained access to any signal imported by an MVPD serving their community, meaning they could watch the same syndicated program on their local station or on the imported distant station without any loss in quality. Accordingly, although the local

[19] *See* Program Exclusivity R&O at ¶ 5 (recognizing that, unlike broadcasters, cable operators have the ability to obtain programming on an exclusive basis).

broadcaster paid a syndication fee premised on receiving 100% of the viewers within its market, some percentage of those viewers might watch on another station, thus devaluing the local broadcaster's investment in the syndicated programming.

2. Syndicated Exclusivity Rules Protect Exclusivity By Providing a Efficient Mechanism for Enforcement of Negotiated Rights.

The FCC's syndicated exclusivity rules solve this dilemma by providing broadcasters with a mechanism for blocking duplicate programming that violates their contractual rights. Under the rules, a broadcaster who negotiates for exclusivity and follows the other procedures in the rules can prevent a cable system from importing programming that violates the station's rights to exclusivity.[20] Importantly, these rules do not "bestow exclusivity rights" upon broadcasters, but rather permit "broadcasters to obtain the same enforceable exclusive distribution rights in syndicated programming that all other video programming distributors . . . enjoy."[21] Thus, contrary to the petitioners' allegations that program exclusivity rules provide a "one-sided level of protection," these rules actually level the playing field between local broadcasters and cable operators, who by the nature of their large market share and control over the final point of distribution to end-users, can more easily obtain and enforce exclusive rights.

The Commission's syndicated exclusivity rules provide an efficient, cost-effective, and timely remedy for enforcing broadcasters' bargained for rights to exclusivity. In contrast, without these rules, it would be difficult, if not impossible, for local broadcasters and syndicators to address effectively the importation of duplicative programming. Assuming that broadcasters and syndicators could contract for all the

[20] *See* 47 C.F.R. § 76.101, *et seq.*

[21] Program Exclusivity R&O at ¶ 6.

necessary exclusivity rights, they still cannot by contract create the remedy that is critical to effective enforcement—the ability to immediately prevent the injury by blocking carriage of the distant duplicating signal.[22] Neither the local broadcaster nor the syndicator could directly compel the MVPD to stop retransmitting the duplicating signal, because neither would be party to the carriage agreement between the out-of-market station and the MVPD. Moreover, existing contracts, which have been written in reliance on the FCC's rules, would have to be substantially modified, further complicating syndication agreements and potentially increasing transaction costs. These factors would materially hinder, if not impede, the ability of broadcasters and syndicators to enforce agreed upon exclusivity rights.

Even assuming a syndicator could negotiate for the right to terminate an agreement in the event a broadcast station impermissibly consented to carriage in another market, in breach of the contract, enforcing that right could require the syndicator to sacrifice syndication fees from one broadcaster to protect the exclusivity that it granted another, reducing the total value of the program to the syndicator. Pursuing this path would also be time-consuming and expensive. In the meantime, the broadcaster possessing the exclusive rights would continue to suffer as its viewership was diluted by the importation of the other broadcaster's signal.

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[22] If an out-of-market station were to grant retransmission consent to an MVPD, notwithstanding a restriction in a program agreement prohibiting such consent, current FCC precedent would allow the MVPD to continue to carry the station's signal. *See Monroe, Georgia Water Light and Gas Commission*, Memorandum Opinion and Order, 19 FCC Rcd. 13977 ¶¶ 8-9 (Media Bureau 2004) (refusing to consider whether a station had the contractual right to grant an MVPD retransmission consent where such consent was already granted). Thus, a local station with exclusivity rights may have no effective injunctive remedy to prevent importation of the duplicating signal absent the Commission's rules.

### 3. Exclusivity Provides the Necessary Incentives for a Robust System of Program Development and Distribution That Creates More Programming That Viewers Desire.

Television production, like any other business, relies on profit motives to encourage producers to develop programming. Thus, as the Commission has recognized, "In order for television programming to be produced, program producers must be compensated in such a way that they will have incentives to produce the amount and types of programming that viewers desire."[23] The converse of this point is that, "as a matter of basic economics, the supply of programming will be less than it would otherwise be when the price suppliers can expect to receive is less than it would otherwise be . . ."[24] Syndicated exclusivity rules maximize the market value, and thus the supply, of television programming by providing content creators with the proper incentives to develop rich and dynamic programming.

The value to a broadcaster of a syndicated program is the amount of advertising revenue that program can generate for the station. Advertising revenue, of course, is determined by the number and type of viewers that a particular program attracts. As a general rule, then, more popular programming will attract more advertisers, increasing the value of such programming to the station. In turn, the station may pay more to the syndicator, thus rewarding the creation of desirable programming.

This incentive-based system fails, however, when the broadcaster cannot realize the full value of the programming it acquires. If a broadcaster loses 30% of its viewers to

[23] Program Exclusivity R&O at ¶ 54.

[24] *Id.* at ¶ 44.

the same program on an imported station,[25] then it will be unable to attract advertisers willing to pay the same rate as if the broadcaster had the exclusive rights for which it negotiated. The effect of this loss extends beyond just the local broadcaster. Because the distant station's advertisers will not value the ability to reach consumers in a different market, there will not be a corresponding increase in value to the distant station.[26] Accordingly, the distant station will have little incentive to increase its payment to the syndicator, and the total value of the program, despite reaching the same number of viewers, will decline.

As the Commission recognized when it reinstated the syndicated exclusivity rules in 1988, just eight years after their rescission, this problem is exacerbated because "duplication is much more probable for popular programs that are particularly likely to draw large audiences, with or without duplication, than it is for less popular programs."[27] MVPDs import distant signals to enhance their channel lineups, so they would logically import channels that offer the most value to viewers in the form of the most popular programming. The effect of this marketplace reality is to "maximize[] the economic damage" that a loss of enforceable exclusivity would inflict upon the program distribution chain.[28] As demonstrated above, diversion that occurs when broadcasters and syndicators cannot protect their negotiated exclusivity rights depresses the value of syndicated programming for both the program supplier and the broadcaster. Thus,

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[25] The actual amount of diversion is likely to be even higher. The Commission has previously estimated that as much as 50% of a station's viewership can be diverted to an imported station carrying the same programming. *See id.* at ¶ 36.

[26] *See id.* at ¶ 41.

[27] *Id.* at ¶ 37.

[28] *Id.*

without a means to enforce exclusivity, the most popular programming would become less profitable, shifting the incentives for producers away from creating programming that will appeal to the greatest number of viewers. Resulting contraction in the supply of syndicated programming would harm viewers, the innocent bystanders in the process, who would be left with fewer attractive viewing options.

### D. Small Market Broadcasters Will Disproportionately Suffer if the Commission Eliminates Syndicated Exclusivity, Frustrating the Commission's Localism Objectives.

Consistent and longstanding FCC policy recognizes that broadcasting serves the public interest by providing a mass media resource that serves the needs of local communities.[29] As the Commission has acknowledged, interfering with the contractual arrangements between broadcasters and distributors by modifying or eliminating syndicated exclusivity protection "would contradict [the Commission's] requirements of broadcast licensees and would hinder [its] policy goals."[30]

Program exclusivity rules are essential to the success of the local broadcast model that has served the nation well for decades. The weight of the loss of syndicated exclusivity protection would likely fall upon small market broadcasters, which often reside in the shadows of large market stations, but play an important role in fulfilling the Commission's localism objectives.[31] Examples of these markets include Palm Springs, California (107 miles to Los Angeles), Macon, Georgia (86 miles to Atlanta), Rockford,

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[29] 2005 Report to Congress at ¶ 50 ("[T]he Commission has a longstanding policy favoring the provision of local broadcast service to communities, and the Commission expects and indeed requires broadcasters to serve the needs of their local communities.").

[30] *Id.*

[31] While the signals of some stations located in small and mid sized markets may extend into the larger markets, this area is likely to be far less pervasive, and result in much less of an adverse economic effect, than that of a large market station in a neighboring small or mid sized market.

Illinois (89 miles to Chicago), and Madison, Wisconsin (80 miles to Milwaukee). These are independent communities with local advertisers who appeal to potential customers through their local broadcast television stations. Exclusive access to syndicated programming supports this model by driving viewership to the local station, helping to promote the station's identity and generate local advertising revenues that can be used to fund local programming.

MVPDs in many of these small to mid sized markets also carry one or more popular stations from the neighboring urban area. For example, in addition to their local broadcast affiliates, cable subscribers in Palm Springs also have access to the ABC and NBC stations from Los Angeles.[32] Under the program exclusivity rules, however, if the Palm Springs stations have negotiated with their syndicators for exclusivity rights, they can require the local cable operator located within the station's permissible "zone of protection" to block any duplicate programming that violates those rights. This exclusivity protects the viability of the local broadcast model by ensuring that local advertisers can continue to reach local viewers by advertising during syndicated programming on the station, allowing the station to continue to secure programming that serves the needs of the market.

The effect of lost exclusivity on small market broadcasters would be far-reaching, threatening to undermine the Commission's localism objectives. These stations would suffer financially from the lost advertising revenue, making it more difficult to acquire and develop programming that appeals to their local audience. The loss of exclusivity

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[32] *See* TV Listings for Time Warner Cable-Standard in Palm Springs, CA, http://tvlistings.aol.com/listings/ca/palm-springs/time-warner-cable-standard?hid=CA04470&zipcode=92262 (last visited May 20, 2011).

would also make syndicated programming less attractive to the small market broadcaster, forcing syndicators to consider a more profitable distribution source for their content, such as cable, which could enjoy effective exclusivity. A reduction in the type or quality of syndicated programming on small market stations would affect all types of programming on the stations, not just syndicated programming. For instance, syndicated programming often provides an important lead-in for local newscasts. Viewers watching syndicated programming on the imported station may be less likely to change the channel for the local newscast, leading to lower ratings and threatening the viability of this important public service. Additionally, the local television model supported by syndicated exclusivity rules provides an important source of emergency information to viewers. Local stations frequently use crawls or cut-ins to distribute important local information during emergencies. A distant station has little incentive to provide detailed information about smaller communities in other media markets. This is exactly the loss of localism that the Commission sought to avoid when it reinstated the syndicated exclusivity rules in 1988.[33]

## IV. <u>**CONCLUSION**</u>

Syndicated distribution is an essential component of the market that develops and delivers high quality and diverse television programming to American viewers. Syndication provides a critical revenue source to facilitate the production of expensive network programming while also serving as a marketplace for first-run talk shows, game

[33] Program Exclusivity R&O at ¶ 62 (recognizing that broadcaster's "inability to enforce exclusive contracts puts them at a competitive disadvantage relative to their rivals who can enforce exclusive contracts; their advertisers' abilities to reach as wide an audience as possible are impaired; and consumers are denied the benefits of full and fair competition: higher quality and more diverse programming delivered to them in the most efficient possible way.").

shows, and other programs that appeal to tens of millions of viewers every day. Further, SPT and other syndicators support the Commission's localism goals by providing local broadcast television stations, regardless of market size or position, with the type of programming that attracts the viewership and corresponding advertising revenue necessary for these stations to deliver content that their local communities desire and need.

For decades, the FCC's syndicated exclusivity rules have played a central role in the marketplace for syndicated programming by protecting privately negotiated exclusive distribution rights. Marketplace participants have come to accept and rely upon these rules and the role they play in encouraging an effective and efficient system for program distribution. The Commission already erroneously repealed its syndicated exclusivity rules once, recognizing just eight years later the harmful effects such actions inflicted upon producers, syndicators, local broadcasters, and ultimately viewers. SPT urges the Commission not to make the same mistake twice. Instead, the Commission should recognize that, by providing a vehicle by which broadcasters and syndicators can enforce privately negotiated rights, the syndicated exclusivity rules advance the FCC's interest in maintaining a vibrant supply of programming delivered by a network of local, over-the-air broadcasters.

Respectfully submitted,

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